Supreme Court, U.S.
FILED
SEP 13 1991
OFFICE OF THE CLERK

No. 90-1577

In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, PETITIONER

v.

R.L.C., A JUVENILE MALE

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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TABLE OF AUTHORITIES

Cases:	Page
United States v. *Evans*, 333 U.S. 483 (1948)	3
United States v. *Hudson*, 11 U.S. (7 Cranch) 32 (1812)	3
United States v. *Marco L.*, 868 F.2d 1121 (9th Cir.), cert. denied, 493 U.S. 956 (1989)	1
Statutes:	
Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1976	5
Juvenile Delinquency Act:	
18 U.S.C. 5031-5042	5
18 U.S.C. 5037	4, 5, 7
18 U.S.C. 5037(a)	2
18 U.S.C. 5037(c)(1)(A)	3, 6
18 U.S.C. 5037(c)(1)(B) (Supp. II 1984)	4, 5
18 U.S.C. 5037(c)(1)(B)	1, 2, 3, 4, 5
18 U.S.C. 5037(c)(2)	6
18 U.S.C. 241	4
18 U.S.C. 242	4
18 U.S.C. 924(c)	4
18 U.S.C. 924(e)(1)	4
18 U.S.C. 3581	5
18 U.S.C. 3581(b) (Supp. II 1984)	4, 5
21 U.S.C. 841(b)	4
28 U.S.C. 995(a)(19)	2
Miscellaneous:	
56 Fed. Reg. 22,779 (1991)	1
S. Rep. No. 225, 98th Cong., 1st Sess. (1983)	5

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1. There are two critical flaws in respondent's interpretation of 18 U.S.C. 5037(c)(1)(B). The first is that under his interpretation, the Sentencing Guidelines would in effect apply to juvenile proceedings, at least to the extent of setting the maximum permissible penalties. See Resp. Br. 8-9 n.15, 22 n.33. But as we explained in our opening brief (at 10-11 n.1), two laws make clear that the Sentencing Guidelines do not apply to juvenile proceedings, and the Sentencing Commission recently echoed that point, 56 Fed. Reg. 22,779 (1991) ("The guidelines are not applicable to a person sentenced as a juvenile delinquent under the provisions of 18 U.S.C. 5037."). Accord *United States* v. *Marco L.*, 868 F.2d 1121, 1124 (9th Cir.), cert. denied, 493 U.S. 956 (1989).

Section 5037(a) of Title 18 requires the district courts in juvenile proceedings to consider "any pertinent policy statements" adopted by the Sentencing Commission, but does not apply the Sentencing Guidelines to such proceedings. Furthermore, 28 U.S.C. 995(a)(19) directs the Sentencing Commission to "study the feasibility of developing guidelines for the disposition of juvenile delinquents," which shows that Congress did not regard the Guidelines in their current form as governing juvenile proceedings. In light of those statutes, Section 5037(c)(1)(B) should not be construed in a manner that in effect applies the Sentencing Guidelines to juvenile proceedings.

The second critical flaw in respondents' argument is that his interpretation of Section 5037(c)(1)(B) is unfaithful to its text. He contends that Section 5037(c)(1)(B) requires a court to impose on a juvenile the same sentence that the court would have imposed on a "similarly situated adult offender," *i.e.*, one with "the same base offense level, specific offense characteristics and criminal history category," as well as "any aggravating circumstances which would merit an upward departure from the Guidelines' range." Resp. Br. 11 n.16. That contention might have had merit if Congress had written Section 5037(c)(1)(B) to refer to "the *same* term of imprisonment that *would have been imposed* if the juvenile had been tried and convicted as an adult." But Congress did not write the statute that way. Instead, Section 5037(c)(1)(B) refers to "the *maximum* term of imprisonment that *would be authorized* if the juvenile had been tried and convicted as an adult" (emphasis added). That phrase is most naturally read to refer to the maximum statutory punishment that Congress has authorized a court to impose for a crime, since only Congress can authorize a court to sentence a defendant to a term of imprisonment. See *United States* v. *Evans*, 333 U.S. 483 (1948); *United States* v. *Hudson*, 11 U.S. (7 Cranch) 32 (1812).

Respondent contends that we have defined the term "authorized" too narrowly. He maintains that the term includes the authority Congress vested in the Sentencing Commission to restrict and channel the district courts' discretion at sentencing; that the Sentencing Commission has the authority to define maximum sentences under the Sentencing Guidelines that are less than the statutory maximum; and that the Sentencing Commission has done precisely that by devising rules and procedures that the courts must follow in sentencing under the Guidelines. Resp. Br. 9-12.

Respondent misapprehends the role that the Guidelines play in the federal sentencing process. The Guidelines channel the district courts' discretion to sentence within congressionally authorized limits, ordering and weighing factors that the courts would otherwise consider at sentencing. The Sentencing Guidelines do not vest sentencing authority in district courts; rather, the Guidelines *restrict* the discretion that courts possess by virtue of a statute and a guilty verdict.

2. Respondent claims that if Section 5037(c)(1)(B) does not refer to the maximum sentence authorized by the Sentencing Guidelines, part of the statute is superfluous. His argument proceeds as follows: Section 5037(c)(1)(A) and (B) limit the sentence that a juvenile under the age of 18 can receive to the lesser of the period before he turns 21 or "the maximum term of imprisonment that would be authorized *if the juvenile had been tried and convicted as an adult*" (emphasis added). Respondent maintains that if the phrase "the maximum term of imprisonment"

refers to the statutory maximum sentence, as we have argued, then the italicized phrase is superfluous, since the "maximum term of imprisonment" necessarily refers to the statutory maximum term of imprisonment that an adult can receive. For that reason, respondent concludes, the italicized phrase must refer to the maximum sentence that an adult can receive under the Sentencing Guidelines. Resp. Br. 12-15.

Respondent is wrong; the statutory language in question is not superfluous under our construction. First, the statutory language makes clear that the source of authority for the maximum term of imprisonment is the offense of conviction, which dictates the term of imprisonment for adult offenders. Second, the language used in Section 5037 adds a degree of specificity that may be necessary in some cases. Because some statutes provide different penalties based on factors such as the defendant's prior record or the fate of the victim,[1] the language used in Section 5037 is necessary to make clear Congress's intent to subject juveniles to the same statutory maximum term of imprisonment to which similarly situated adults would be subjected. The phrase that respondent claims we have rendered superfluous is therefore necessary to avoid an ambiguity that could arise from a terser version of the statute.[2]

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[1] See, *e.g.*, 18 U.S.C. 241, 242, 924(c), and 924(e)(1); 21 U.S.C. 841(b).

[2] Our construction of Section 5037(c)(1)(B) is also consistent with the background of the statute. Section 5037(c)(1)(B) was enacted as part of the Comprehensive Crime Control Act of 1984; at that time, the statute referred to "the maximum term of imprisonment that would be authorized *by [18 U.S.C.] 3581(b)* if the juvenile had been tried and convicted as an adult." 18 U.S.C. 5037(c)(1)(B) (Supp. II 1984) (emphasis added). Section 3581(b), which was cross-referenced in the original version of Section 5037(c)(1)(B), was part of the new offense classification system adopted by the 1984 Act. Because Section 3581 defined maximum terms of imprisonment for adults, it made sense to refer to that provision in Section 5037. In addition, because Section 3581(b) did not apply to juvenile sentencing, it made sense to refer to the penalty under Section 3581(b) that would have applied if the juvenile had been prosecuted as an adult. The part of Section 5037(c)(1)(B) cited by respondent ("if the juvenile had been tried and convicted as an adult") therefore was not superfluous when that law was enacted. As we explained in our opening brief (at 18-21), Congress deleted the cross-reference to 18 U.S.C. 3581(b) in 1986. In so doing, Congress modified Section 5037(c)(1)(B) to ensure that juveniles would not generally be subject to longer terms of confinement than adults; Congress did not make the change in order to apply the Sentencing Guidelines to juvenile proceedings.

3. Respondent discusses at length the history of the Juvenile Delinquency Act, 18 U.S.C. 5031-5042, which, he claims, shows that a juvenile offender cannot receive a sentence longer than the Guidelines sentence that an adult offender would receive for the same crime. Resp. Br. 15-22. Nothing respondent cites remotely supports his argument.

The Juvenile Delinquency Act, which was enacted in 1938, was revised as part of the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1976, but nothing in the 1984 Act or its legislative history hints that the Sentencing Guidelines were meant to apply to juvenile proceedings. Respondent cites a passage from the Senate Report stating that the sentences imposed at juvenile disposition hearings "will represent the real time to be spent by the Juvenile in a manner similar to that for adult offenders under the bill." Resp. Br. 20, quoting S. Rep. No. 225, 98th Cong., 1st Sess. 156 (1983). But that passage simply explains that because the 1984 Act abol-

ished parole for both adult and juvenile offenders, the sentence imposed at a juvenile disposition is the sentence that the juvenile will actually serve. That point does not support the proposition that a juvenile cannot receive a sentence longer than the sentence that an adult would receive under the Sentencing Guidelines.

4. Respondent argues that declining to apply the Sentencing Guidelines to juvenile offenders is inconsistent with the purpose of the Comprehensive Crime Control Act of 1984. Resp. Br. 21-22. In respondent's words, "[i]t seems ludicrous that Congress would have created a subclass of offenders who would in effect receive uniformly more severe sentences after the enactment of the Comprehensive Crime Control Act when the central purpose of the Act was to minimize sentencing disparities for all classes of offenders." Resp. Br. 21-22. There is, however, no reason to suppose that juveniles will "in effect receive uniformly more severe sentences" under the Comprehensive Crime Control Act of 1984. The Juvenile Delinquency Act limits juvenile sentences in various respects that do not apply to adult sentences: A juvenile under 18 may not be confined after date of his 21st birthday, 18 U.S.C. 5037(c)(1)(A), and a juvenile between the ages of 18 and 21 may not be confined for more than five years for a particularly serious felony and three years for a less serious felony, 18 U.S.C. 5037(c)(2). The only effect of the "maximum term of imprisonment" clause at issue in this case is to provide that in those cases in which the district court believes that a lengthy period of detention would serve the interests of society and the juvenile, the court will have the discretion to impose that term of detention without being restricted to the term

that would apply under the Sentencing Guidelines to a similarly situated adult. In many instances, periods of juvenile detention will be shorter than or equal to the period of imprisonment that would be imposed on similarly situated adults. Our submission is that nothing in Section 5037 requires that that always be the case.

For the foregoing reasons and those given in our opening brief, it is respectfully submitted that the judgment of the court of appeals should be reversed.

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SEPTEMBER 1991

☆ U. S. GOVERNMENT PRINTING OFFICE: 1991 282061 45074